IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3940 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE D.A.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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BHARATBHAI MOTILAL KOTAK C/O JALARAM TRAVELS

Versus

REGIONAL TRANSPORT OFFICER

Appearance:

1. Special Civil Application No. 3940 of 2001

MR DK NAKRANI for Petitioner No. 1

MR PREMAL JOSHI, A.G.P for Respondent No. 1-2

NOTICE SERVED BY DS for Respondent No. 1-2

CORAM : MR.JUSTICE D.A.MEHTA

Date of decision: 02/07/2002

ORAL JUDGEMENT

Rule. Mr. Premal Joshi, learned A.G.P. waives service of rule.

2. The petitioner, who is owning motor vehicle No. GJ-5-U-8891, an omni bus, is carrying on business as Jalaram Travels. It appears that the petitioner filed N.T. Form for non-use of vehicle as required by Section 3 (2) ofthe Bombay Motor Vehicles Act, 1958 and Rule 5 of the Bombay Motor Vehicles Tax Rules, 1959 for the period 1st December, 1997 to 31st March, 1998. This application was admittedly filed on 1st December, 1997. Thereafter, as the undisputed facts on record go to show, no application for non-use was made in the month of April, 1998. Once again applications for the period 1st May, 1998 to 31st March, 1999 and 1st April, 1999 to 31st March, 2000 came to be filed. As the petitioner was called upon to pay tax for the period during which his vehicle was not in use, the petitioner preferred appeal before the Transport Commissioner, Gujarat State, Ahmedabad, which came to be decided on 16th April, 2001. This petition has been filed against the aforesaid order of the appellate authority and consequential notice dated 26th April, 2001 (Annexure -D) calling upon the petitioner to pay a sum of Rs. 2,04,575/- which includes penalty at the rate of 25%.

3. Heard Mr. D.K. Nakrani, learned advocate for the petitioner and leaned A.G.P. Mr. Premal Joshi appearing on behalf of the respondents.

4. The order of the appellate authority discloses, to say the least, non-application of mind and requires to be interfered with for the reasons that follows;

5. The appellate authority himself accepts that an application for period 1st December, 1997 to 31st March, 1998 has been filed, but as the said application was beyond the prescribed time-limit, an adverse inference had to be drawn in relation to the month of December, 1997. In so far as the period of 1st January, 1998 to 31st March, 1998 is concerned, the appellate authority accepts that the application for non-use was in order and the petitioner should be granted relief for the said period. Thereafter, the appellate authority states that for the month of April, 1998 there is no application for non-use and the subsequent applications cover periods 1st May, 1998 to 31st March, 1999 and 1st April, 1999 to 31st March, 2000. Hence, according to the appellate authority, in view of the fact that tax was due in relation to periods not covered by an application for non-use, it was not possible for the respondent authorities to accept and grant relief as per the application for the subsequent periods, which were admittedly covered by the applications pending before the

authorities. This reasoning could have been upheld provided the appellate authority had been consistent in its approach. In relation to the first application, as already seen hereinbefore, he has granted relief for the period 1st January, 1998 to 31st March, 1998 while omitted only the period of December, 1997. On the same parity of reasoning, the appellate authority ought to have levied tax for the period of April, 1998 and granted relief for the period 1st May, 1998 to 31st March, 1998 and 1st April, 1999 to 31st March, 2000. Instead the appellate authority states that as the month of April, 1998 has not been covered by an application for non-use, the petitioner will be required to pay tax for the period commencing from 1st April, 1998 to 30th April, 1999, while in the same breath he accepts the petitioner's application for the subsequent period ending on 31st March, 2000.

6. In light of the foregoing facts and circumstances of the case, the petition is allowed to the extent that the respondent authorities shall compute tax for the months of December, 1997 and April, 1998 only as being the period not covered by any application for non-use of the vehicle in question. It will be open to the respondent authorities to levy interest or penalty as may be permissible in law in relation to the tax due for the aforesaid two months. The petitioner shall be granted relief for the remaining periods which are admittedly covered by applications for non-use. The petitioner, through his advocate Mr. D.K. Nakrani, undertakes to make payment of the said recomputed tax and penalty within a period of two weeks from the date of receipt of communication stating the recomputed tax and penalty.

The petition is allowed accordingly. There shall be no order as to costs. Rule is made absolute. Direct service is permitted.

(D.A MEHTA,J.)

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